

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

ELVANO GALLI	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 04CV11544JLT
	)	
F/V BARBARA ANN (O.N. 699442)	)	
her engines, boilers, tackle,	)	
fishing permits and appurtenances,	)	
<i>in rem</i>	)	
	)	
and Louis Pasquale, <i>in personam</i> ,	)	
Defendant.	)	

**PLAINTIFF, ELVANO GALLI'S  
MOTION FOR CONFIRMATION OF SALE OF F/V BARBARA ANN (O.N. 699442)  
WITH INCORPORATED MEMORANDUM OF LAW**

NOW COMES Plaintiff, Elvano Galli by and through his counsel, David S. Smith, and pursuant to the Court's Order of Sale dated March 24, 2005, respectfully moves for confirmation of the sale conducted by the United States Marshal Service on April 22, 2005, of the F/V BARBARA ANN (O.N. 699442) at the high bid of Twenty Three Thousand Dollars (\$23,000.00). In support thereof, Plaintiff states as follows:

**FACTS**

1. Pursuant to the Order of Sale dated March 24, 2005, a sale by public auction of the F/V BARBARA ANN (O.N. 699442), her respective engines, machinery, equipment, masts, including but not limited to her federal and state fishing permits and history, and appurtenances, etc. was conducted at 12:00 p.m. at Gloucester Marine Railways Corp in Gloucester, Massachusetts on Friday, April 22, 2005.
2. Pursuant to the Order of Sale, the United States Marshal advertised the sale in the *Boston Herald* twice prior to the sale. See Return of Services filed by U.S. Marshal on April 25,

2005. Plaintiff also caused notice to be published in the *Gloucester Daily Times*. Copies of said notice is attached hereto as Exhibits “A”.

3. In addition, Notice of the Sale was served upon the Defendant, Louis Pasquale. See Exhibit “B” attached hereto.
4. On April 22, 2005, U.S. Marshal, conducted the sale at Gloucester Marine Railways in Gloucester, Massachusetts. Interested bidders registered in connection with the sale. An oral auction was had. Once the sale was declared open, bidding began with \$10.00 and proceeded upwards to \$5,000.00, \$7,500.00, \$10,000.00, \$11,000.00, \$21,000.00, \$22,000.00 and the final and highest bid was \$23,000.00. The U.S. Marshal declared the Plaintiff as the winning bidder, subject to confirmation by the Court.
5. Plaintiff paid for a valuation survey to be performed on the F/V BARBARA ANN. The surveyor concluded that the value of the vessel at this time was \$30,000.00<sup>1</sup>. See Exhibit “C” attached hereto.

### **ARGUMENT**

There is no disagreement as to this Court’s supervisory responsibilities regarding confirmation of a sale by the United States Marshal at public auction. *See Munro Drydock, Inc. v. M/V HERON*, 585 F.2d 13, (1<sup>st</sup> Cir. 1978); *Maine Nat. Bank v. F/V EXPLORER*, 663 F.Supp. 462 (D.Me), *aff’d* 833 F.2d 375 (1<sup>st</sup> Cir. 1987); *Southern New England Production Credit Association v. O/S MY MARIE*, 611 F.Supp. 757 (D.Me. 1985).

The Court must balance the interests of creditors and debtors with a necessity to generate confidence in court-ordered sales. *Munro Drydock, Inc. v. M/V HERON*, 585 F.2d at 14. The Court should not, absent a compelling reason, disturb a fairly conducted auction which does not infringe upon the rights of creditors and debtors. Therefore, a fairly conducted sale should be

confirmed unless the sale price is grossly inadequate. *See Munro Drydock, Inc. v. M/V HERON*, 585 F.2d at 15; *Gowen, Inc. v. F/V QUALITY ONE*, 2000 A.M.C. 2225 (D.Me. 2000), *aff'd* 244 F.3d 64 (1<sup>st</sup> Cir. 2001). As recognized by this Court in *Gowen, Inc., supra*, “It is well established that, given the inherent circumstances of a forced sale, a foreclosure sale is not expected to generate a price equal to or even near the market value of a piece of property.” *Gowen, Inc., supra*, at 2232.

In this case, all parties were notified of the sale and notice was further provided through publication as aforesaid. Consequently, considerable interest in the vessels was generated and bidding at the auction was in conformity with the Order of Sale.

WHEREFORE, Plaintiff Elvano Galli moves that this Court confirm the sale of the F/V BARBARA ANN (O.N. 699442), her respective engines, machinery, equipment, masts, including but not limited to her federal and state fishing permits and history, and appurtenance, etc. in the amount of Twenty Three Thousand Dollars (\$23,000.00) and further moves that this Court direct the United States Marshal to convey the F/V BARBARA ANN (O.N. 699442), her respective engines, machinery, equipment, masts, including but not limited to her federal and state fishing permits and history and appurtenances, etc. free and clear of all liens and encumbrances to the Plaintiff and further be released from custody.

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<sup>1</sup> The survey is expected to indicate that the value of the vessel prior to the sinking was approximately \$35,000.00.

Respectfully submitted,  
**Elvano Galli**  
By its attorney

/s/ David S. Smith

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David S. Smith, Esquire  
BBO No.: 634865  
Cianciulli and Ouellette  
163 Cabot Street  
Beverly, MA 01915  
Tel: (978) 922-9933

CERTIFICATE OF SERVICE

I, David S. Smith, attorney for the plaintiff, hereby certifies that I caused to have served a copy of the foregoing document by regular mail postage prepaid to upon Louis Pasquale, care of the Essex County Correctional Facility & Sheriff's Headquarters P.O. Box 807 Middleton, Massachusetts 01949-2807 this 26<sup>th</sup> day of April, 2005.

/s/ David S. Smith

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David S. Smith